

2876.5022 CONTENTS OF AN INVESTMENT ADVISORY CONTRACT.

Subpart 1. **Generally.** The provisions of this part apply to federal covered investment advisers to the extent permitted by the National Securities Markets Improvement Act of 1996.

Subp. 2. **Writing requirements.** It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

A. the services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and any grant of discretionary power to the investment adviser;

B. that no direct or indirect assignment or transfer of the contract may be made by the investment adviser without the consent of the client or other party to the contract;

C. that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client, unless the investment adviser adheres to the provisions in Code of Federal Regulations, title 17, section 275.205 -3; and

D. that the investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

Subp. 3. **Unlawful acts.** It is unlawful for any investment adviser to:

A. include in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Minnesota Securities Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

B. enter into, extend, or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers required to be registered under the Minnesota Securities Act, notwithstanding whether the adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

Subp. 4. **Applicability of other laws.** Any person entering into or performing an investment advisory contract under this part is not relieved of any obligations under part 2876.5023 or any other applicable provision of the Minnesota Securities Act or any rule or order thereunder.

Subp. 5. **Independent agent of advisory client.** Nothing in this part shall relieve a client's independent agent from any obligation to the client under applicable law.

Subp. 6. **Definitions.** The following definitions apply for purposes of this part.

A. "Affiliate" shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.

B. "Assignment," as used in subpart 2, item B, includes any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended, or renewed.

C. "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include:

(1) the investment adviser relying on this part;

(2) an affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;

(3) an interested person of the investment adviser;

(4) a person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or an interested person of the investment adviser; or

(5) a person with any material relationship between himself or herself, or an affiliated person of that person, and the investment adviser, or an affiliated person of the investment adviser, that exists, or has existed at any time during the past two years.

D. "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not, or any receiver, trustee in a case under United States Code, title 11, or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such. "Company" shall not include:

(1) a company required to be registered under the Investment Company Act of 1940 but which is not so registered;

(2) a private investment company, for purposes of this subitem, a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(3) an investment company registered under the Investment Company Act of 1940; or

(4) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of this item.

E. "Interested person" means:

(1) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(2) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(a) one-tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

(b) five percent of the total assets of the person seeking to act as the client's independent agent; or

(3) any person, or partner or employee of any person, who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

Statutory Authority: *MS s 45.023; 80A.82*

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